

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 16.12.2025

Pronounced on: 26.12.2025

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*Whether the operative part
or full judgment is
pronounced: **Full***

Bail App No.231/2025

GHULAM NABI GANIE

...PETITIONER(S)/APPELLANT(S)

*Through: - Mr. Shafqat Nazir, Advocate, with
Ms. Hina Baqal, Advocate.*

Vs.

UT OF J&K & ANR.

...RESPONDENT(S)

*Through: - Mr. Ilyas Laway, GA-for R1.
Mr. Mir Umar, Advocate-for R2.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has invoked jurisdiction of this Court under Section 483 of BNSS for grant of bail in a case arising out of FIR No.222/2024 for offences under Sections 64 of BNS and Sections 5(n) and 6 of the POCSO Act registered with Police Station, Anantnag, which is stated to be pending before the Court of Principal Sessions Judge, Anantnag.

2) The facts leading to the filing of the present bail application are that on 16.12.2024, the victim (respondent No.2 herein), lodged a written report with the police alleging therein that she is 19 years old and that her grandfather (petitioner herein) has committed rape upon her. She

further alleged that the petitioner has exploited her many times and that her father and his family had locked her in a room three years back. On the basis of this report, FIR No.222/2024 for offences under Section 64 and 127 of BNS was registered and investigation of the case was set into motion.

3) During the course of investigation, the prosecutrix was subjected to medical examination. Her DNA sample was also obtained which was sent to Forensic Laboratory for analysis. Besides this, statement of the prosecutrix under Section 183 of BNSS was recorded before the Magistrate.

4) In her statement recorded before the Magistrate, the prosecutrix narrated that after her birth, her father handed her over to his friend Ghulam Mohammad Sheikh who looked after her. On 10th May, 2019, she came back to her biological family and her father kept her confined in his house for three years. She was mentally tortured by her father. In the year 2020, she tried to commit suicide and in the year 2021, she consumed poison. Thereafter she requested her father to send her to some hostel. On 1st April, 2022, she was admitted to Jamia Aisha Sideeqa Hostel. Her father used to visit her on some occasions. The petitioner, who happens to be her grandfather, also used to come over there and he was incurring her expenses. On 24th November,

2023, she tried to jump from the third floor of the hostel because she had to go back to her home on account of vacation. From the year 2019 to 2021, the petitioner sexually harassed her. After jumping down from the hostel building, she remained hospitalized for about three months. The petitioner remained with her in the hospital. In January, 2024, she was discharged from the hospital and she again went back to her home. The petitioner continued with his same actions and he physically tortured her. She shared all this with madam. She requested her father that she would like to go to madam whereafter, upto June, 2024, she stayed in the house of madam Asmat Jan but her father never came over there. Thereafter she stayed in a rented accommodation at Habbak Naseem Bagh, Srinagar. A number of other girls were also staying over there. The petitioner agreed to incur expenditure in this regard. In August, 2024, the petitioner visited her and committed rape upon her. After 4-5 days, the petitioner again came over there and she had kept the video on so as to capture his actions. On the said date also, the petitioner committed rape upon her. Thereafter Dr. Abdul Bari, who is a social worker, uploaded the said video and he contacted her. She shared all the information with Dr. Abdul Bari and he encouraged her to expose such people. She narrated the excesses committed by her grandfather to Dr.

Abdul Bari. She also informed her father about it. Thereafter she, with the help of Dr. Abdul Bari and madam, lodged the report with the police on 13th December, 2024.

5) After concluding the investigation of the case, the offences under Section 64 BNS, 5(n) and 6 of POCSO Act were found established against the petitioner and the challan was laid before the Court of learned Sessions Judge, Anantnag (“the trial court”)

6) Vide order dated 10.03.2025 passed by the trial court, charges for offences under Section 64 of BNS and Sections 5(n) and 6 of the POCSO Act were framed against the petitioner and trial of the case commenced. The statement of the prosecutrix was recorded before the trial court on 22.08.2025/08.09.2025, whereafter the petitioner filed an application for grant of bail before the learned trial court. The said application was dismissed by the learned trial court in terms of order dated 30.09.2025.

7) The petitioner has sought bail by way of present petition on the grounds that the allegations made against him in the challan are absolutely false and frivolous and there is no credible evidence on record to support these allegations. It has been contended that the prosecutrix has turned hostile during trial of the case and she has not

supported the prosecution case, therefore, the bail application of the petitioner could not have been dismissed by the learned trial court. It has been contended that the behaviour and conduct of the prosecutrix has not been upto the mark, inasmuch as she has on multiple occasions attempted suicide and has absconded from the residence as well as from the hostel. It has been further contended that the prosecutrix has the tendency of implicating her close relatives in false and fabricated criminal cases and in the recent past, she had implicated her own step-brother by levelling similar allegations but the case was proved to be false after trial. The petitioner has also contended that he is aged more than 75 years suffering from multiple ailments, therefore, his further incarceration in jail would pose a serious risk to his life.

8) The respondent-State has contested the bail application by filing its reply. In the reply, besides narrating the allegations made in the charge sheet against the petitioner, the respondent-State has submitted that the petitioner is involved in a very heinous offence, as such, he is not entitled to concession of bail. It has been contended that if the petitioner is enlarged on bail, he is likely to abscond and tamper with the prosecution witnesses. It has contended that having regard to relationship between the

petitioner and the prosecutrix, the offence alleged to have been committed by the petitioner becomes all the more heinous and it shows an element of perversion. Therefore, the petitioner does not deserve any leniency. It has been contended that there is no change in circumstances after the rejection of bail application by the trial court, as such, the present application is not maintainable.

9) The prosecutrix, in her objections, has submitted that she had made a complaint against the petitioner in a state of anger and under the influence of external factors at the time when she was a minor. It has been submitted that she had already recorded truthful, voluntary and correct statement before the trial court during trial of the case by stating that the petitioner has never sexually assaulted her nor has he committed any act of wrongdoing upon her. She has also submitted that the petitioner, who happens to be her grandfather, has always taken proper care of her and has even supported her financially.

10) I have heard learned counsel for the parties and perused record of the case including the trial court record.

11) Before coming to the other aspects of the case, it is necessary to deal with the contention of the respondent that the instant bail application is not maintainable because the earlier bail application of the petitioner, after filing of the

charge sheet, stands rejected by the trial court and, as such, there is no change of circumstances.

12) The question that arises for consideration is whether or not successive bail application will lie before this Court. The law on this issue is very clear that if an earlier application was rejected by an inferior court, the superior court can always entertain the successive bail application. In this behalf, I am supported by the ratio laid down by the Supreme Court in the case titled **Gurcharan Singh & Ors vs. State (Delhi Administration), AIR 1978 SC 179** which has been followed by the Bombay High Court in the case of **Devi Das Raghu Nath Naik v. State, (1987) 3 Crimes 363**. Thus, the rejection of a bail application by Sessions Court does not operate as a bar for the High Court to entertain a similar application under Section 439 Cr. P. C/483 BNSS on the same facts and for the same offence.

13) Having held that the instant bail application is maintainable, let us now proceed to deal with the merits of the application. So far as the principles governing grant or refusal of bail are concerned, the same have been elucidated in a large number of judgments rendered by the Supreme Court and this Court. The principles laid down in these judicial precedents can be summarized as under:

- (i) *The gravity of the offence and the nature of of the accusation including the*

frivolity of punishment in a case of conviction;

- (ii) *The position and status of the accused vis-à-vis the victim and the witnesses;*
- (iii) *The likelihood of the accused fleeing from justice;*
- (iv) *The possibility of the accused tampering with the evidence and/or witnesses and obstructing the course of justice;*
- (v) *The possibility of repetition of the offence;*
- (vi) *Prima facie satisfaction of the Court in support of the charge including frivolity of the charge;*
- (vii) *Stage of the investigation;*
- (viii) *Larger interest of the public or the State;*

14) When it comes to offences punishable under a special enactment, such as, POCSO Act, the provisions contained in Sections 29 and 30 of the said Act are also to be borne in mind. Section 29 raises a presumption of commission of an offence under Sections 3, 5, 7 and 9 of the POCSO Act against a person who is prosecuted for commission of the said offence, unless contrary is proved. Similarly, Section 30 raises a presumption with regard to existence of culpable mental state against an accused in prosecution of any offence under the Act which requires a culpable mental state on the part of the accused. However, the accused has a right to prove the fact that he had no such mental state.

15) Coming to the facts of the present case, once the petitioner has been found involved in the alleged offences

under the POCSO Act and the charges for said offence stand already framed against him, a statutory presumption of guilt operates against him. However, the statutory presumption of guilt, which is triggered by operation of Section 29 of the POCSO Act, is rebuttable in nature. Therefore, it is open to an accused to bring to the notice of the Court the material or lack of it to show that the foundational facts giving rise to the presumption are *prima facie* not established in the case or that evidence led during the trial of the case rebuts the presumption operating against him. Thus, an accused will be well within his rights to persuade the Court on the basis of the circumstances that may be established during cross-examination of the witnesses conducted during trial of the case or on the basis of defence evidence, that the presumption of guilt operating against him in view of the provisions contained in Section 29 of the POCSO Act stands rebutted. It is also to be borne in mind that there is no statutory bar to grant of bail in a case involving offences under the POCSO Act. Each case has to be considered on its peculiar facts and circumstances.

16) In the instance case, if we have a look at the statement of the prosecutrix recorded during trial of the case, she has stated that she was annoyed with her grandfather and, therefore, she lodged a report against him. She has further

stated that the petitioner had only abused her and had not done any other thing with her. She was declared hostile and was cross-examined by the learned PP. During her cross-examination, while she admitted having made statement under Section 183 of BNSS before the learned Magistrate, she, however, denied having been sexually exploited by the petitioner. She stated that she was never confined by her father. She admitted that she had tried to commit suicide in the year 2020 and that she had consumed poison in the year 2021 as she did not like the rural atmosphere. She further admitted that on 24th November, 2023, she had tried to jump from the third floor of the hostel building because she did not want to go back to her home during vacation. She reiterated that the petitioner has never done anything wrong with her. She further stated that she gave wrong information about the petitioner to madam. She has also stated that she feel sorry for having levelled false allegations against the petitioner. She stated that there is a dispute between Dr. Bari and the petitioner but she has no knowledge about the details. She has stated that her date of birth is 12.06.2006. Her mobile phone was seized by the police. The witness was shown the video which was stored in the pen drive after extracting it from the mobile cellphone seized from the witness. In the said video, the petitioner is shown to be

committing intercourse with a girl but the girl is not identifiable. The prosecutrix stated that she does not figure in this video but the petitioner does figure therein.

17) When cross-examined by the defence counsel, the prosecutrix stated that she did not record any video and she does not know wherefrom this video came into her mobile cellphone. She further stated that for the first time she is watching this video in the Court. She admitted that there is a dispute between her father and Dr. Bari. She further stated that Dr. Bari accompanied her and told her that by making such statement before the Judge, she will get the property.

18) On the basis of the aforesaid statement of the prosecutrix, learned counsel for the petitioner has argued that the prosecutrix while making her statement has demolished the case set up against the petitioner. He has contended that once the prosecutrix has denied having been sexually assaulted by the petitioner at any point of time and once she has withstood lengthy cross-examination of the learned PP after having been declared hostile, it can safely be stated that the petitioner has succeeded in rebutting the presumption that had arisen against him on account of laying of charge sheet for the offences under Section 5(n) and 6 of the POCSO Act against him.

19) Learned counsel for the petitioner has also referred to the statement of PW Dr. Manzoor Ahmad Ganai, father of the prosecutrix. The said witness has stated that Dr. Bari had called him on phone and asked him to settle the accounts with the prosecutrix. Thereafter he called his daughter who told him that the petitioner has committed wrong with her and she also threatened him that if a house is not given to her at Srinagar, she will lodge an FIR. The witness has further stated that Dr. Bari has enmity with him and he had told his brother-in-law that if the petitioner does not give a house and one half of the orchard to the prosecutrix, he would destroy their family.

20) On the basis of aforesaid statement of PW Dr. Manzoor Ahmad, learned counsel for the petitioner has contended that whole case is outcome of enmity between family of the prosecutrix and Dr. Bari, at whose behest the prosecutrix has levelled false allegations against the petitioner.

21) Learned counsel for the petitioner has also brought to the notice of this Court statement of father of the prosecutrix wherein he has stated that the prosecutrix had, in the previous past, run away from her home and she was at one point of time recovered at Mumbai and that she had levelled allegation of rape against her step-brother who was acquitted by the Court after trial of the case on the basis of

the statement of the prosecutrix that she had levelled false allegation against him. Learned counsel for the petitioner has contended that the aforesaid behaviour and conduct of the prosecutrix goes on to show that she is habitual of levelling false allegations against her near relations and that her behaviour has not been upto the mark right from her childhood.

22) From the narration of statement of the prosecutrix and her father, prima facie, it appears that they have not supported the prosecution version of the case. In fact, these witnesses have not stated anything incriminating against the petitioner. It also appears that there is an angle of enmity in the whole story, as, according to the prosecutrix, she was made to lodge the case against the petitioner at the behest of Dr. Bari, with whom family of the prosecutrix is having a longstanding enmity.

23) Learned Government Advocate, appearing on behalf of respondent No.1, has submitted that the video showing the petitioner committing sexual intercourse with a girl, prima facie, tends to show that there is grain of truth in the allegations levelled by the prosecutrix against him. Therefore, even if she has turned hostile during trial of the case, it cannot be stated that the prosecution case is bound to fail.

24) I am afraid the contention of learned Government Advocate cannot be accepted for the reason that it has been categorically noted by the learned trial court that the girl in the video is not identifiable. Besides this, the prosecutrix has categorically stated that she is not the girl figuring in the video and she has also stated that the petitioner has never committed rape upon her. The DNA profiles generated from the samples obtained from the prosecutrix as per the report of the FSL are consistent with each other and belong to the same individual (female). Therefore, even the DNA sample analysis of the prosecutrix does not implicate the petitioner.

25) It appears that the learned trial court has, while rejecting the bail application of the petitioner, failed to take note of the aforesaid facts and circumstances emerging from the statements of the prosecutrix and her father recorded during trial of the case. The omission on the part of the learned trial court to do so has resulted in passing of the order rejecting the bail application of the petitioner which is not sustainable in law.

26) In view of the nature of evidence available against the petitioner and without commenting upon the merits of the case, it is clear that during trial of the case, the statutory presumption of guilt operating against the petitioner in terms of Section 29 of the POCSO Act stands rebutted. The

petitioner has been in custody for the last one year. The statements of material witnesses have already been recorded and even if the petitioner is released on bail at this stage, there is no chance of the prosecution witnesses getting tampered because the victim and her near relations have already been examined during trial of the case. Besides this, the petitioner is aged more than 75 years suffering from multiple ailments.

27) Merely because the petitioner is facing trial for heinous offences which entail punishment extending upto life imprisonment is not a good enough reason to deny concession of bail to him when his, *prima facie*, involvement in the alleged crime is highly doubtful. The concession of bail to the petitioner, in these circumstances, cannot be denied just to teach him a lesson or to satisfy the conscience of the society as it would amount to inflicting pre-trial punishment upon him, which is impermissible in law.

28) For the foregoing reasons, the petition is allowed and the petitioner is admitted to bail subject to the following conditions:

- (i) *That he shall furnish personal bond in the amount of Rs.50,000/ with two sureties of the like amount to the satisfaction of the learned trial court;*
- (ii) *That he shall appear before the learned trial court on each and every*

date of hearing till conclusion of the trial.

- (iii) *That he shall not leave the territorial limits of the Union Territory of J&K without prior permission of the learned trial court;*
- (iv) *That he shall not intimidate or tamper with prosecution witnesses/evidence.*

29) Observations made hereinabove shall remain confined to the decision of the instant application only and shall not be construed as expression of an opinion on the merits of the case.

30) The bail applications shall stand **disposed** of.

(SANJAY DHAR)
JUDGE

Srinagar
26.12.2025
"Bhat Altaf"

Whether the Judgment is speaking:	Yes
Whether the judgment is reportable:	Yes